

REMARKS

Claims 1-30 and 32 were pending at the time the Notice of Final Office Action was mailed, with claim 31 having previously been canceled.

Claims 1-30 and 32 are presently canceled, thus, claims 1-32 all are canceled.

Claims 33-64 are presently added to capture the disclosed subject matter.

This response is filed with a Request for Continued Examination.

Summary of Interview

The Examiner was kind enough to schedule a telephonic interview with applicants' representative to discuss the case on July 23, 2007. The Examiner reviewed proposed amendments and supporting remarks presented by applicants' representative. The Examiner indicated that the proposed amendments appeared to resolve the rejections under 35 U.S.C. § 112. The Examiner suggested further amendments to further clarify distinctions between the claims and the cited references to advance the prosecution of this case. The claims presented here reflect the Examiner's comments.

Applicants and their representative are very grateful to the Examiner for his time and for his comments. Thank you very, very much.

Rejections under 35 U.S.C. § 112

Applicants submit that the rejection of claims 1-30 and 32 under 35 U.S.C. § 112 as failing the written description requirement or for not being supported by the original disclosure are mooted by the new claims. Applicants maintain that the subject matter recited in the new claims is entirely supported by the disclosure of the present application which provides a full written description of the claimed matter. Therefore, applicants respectfully request the rejections under 35 U.S.C. § 112 are not applicable to the new claims.

Rejection for Nonstatutory Double-Patenting

Although the newly presented claims render the double-patent rejection moot, applicants respectfully traverse the nonstatutory double-patenting rejection. The now-canceled claims were rejected on the basis of nonstatutory double-patenting over the claims of co-pending U.S. Patent Application Serial No. 10/105,422 (the “copending application”) in view of U.S. Patent No. 6,263,368 to Martin or U.S. Patent No. 6,868,082 to Allen et al. (Allen) or U.S. Patent No. 6,781,986 to Sabaa et al. However, applicants submit that the presently submitted claims are distinct from the claims of the copending application well beyond any categorization of a “wording variation” as asserted in the Office Action. Moreover, with great respect, applicant submits that the Office Action’s suggestion that “independently scaling capacity of the switching or flow controlling component was commonly known” is based an extrapolation of the cited references based on an impermissible use of hindsight.

For example, claim 33, which is distinct from now-canceled claim 1, is reproduced below for the convenience of the Examiner:

33. (New) An apparatus for directing communications among a plurality of resources, comprising:
one or more switch components configured to:
analyze each of a plurality of data flows; and
determine if each of the data flows is associated with a requested resource
and:
when the data flow is associated with the requested resource, direct the data flow to the requested resource; and
when the data flow is not associated with a requested resource, request instructions from a control component;
one or more control components each configured to:
receive a request from at least one switch component for instructions on handling the data flow when the data flow is not associated with a requested resource; and
provide instructions to the switch component for handling the unassociated data flow,
wherein a capacity of each of the one or more switch components and a capacity of the one or more of control components is independently scalable by one or more of:
changing the capacity of one or more of the switch components and one or more of the control components; and
changing one or more of a number of the switch components and control components.

Respectfully, neither in form nor content can claim 33 be considered as presenting merely a wording variation from claim 1; accordingly, the double-patent rejection must be withdrawn.

In addition, the claims recite one or more nonobvious attributes that are not recited by claims of the copending applications. Claim 33 recites that components of the claimed apparatus can be scaled independently of one another:

wherein a capacity of each of the one or more switch components and a capacity of the one or more of control components is independently scalable by one or more of:
changing the capacity of one or more of the switch components and one or more of the control components; and
changing one or more of a number of the switch components and control components.

Respectfully, while the cited references mention the possibility of scaling capacity, their scaling exists by allowing for the use of multiple instances of their claimed inventions; in other words, their inventions – as a whole – can be scaled. However, neither Allen nor Sabaa teaches or even suggests that individual components of their systems can be scaled independently of one another, providing a device having scalable capacities within a single instance of the recited apparatus. Accordingly, applicants respectfully submit that the double-patenting rejection must be withdrawn because it cannot stand against the new claims.

Rejection under 35 U.S.C. § 103

Although the newly presented claims render the obviousness rejection moot, applicants respectfully traverse the obviousness rejection against the canceled claims. The now-canceled claims were rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,876,654 to Hegde (Hegde) in view of Martin. Applicants respectfully disagree.

For example, to name just one distinction, the Office Action concedes that Hegde is “silent over independently scalable capacity of the switching and/or the control component,” but asserts that Martin makes up for this shortcoming. Respectfully, Martin discloses nothing that makes up for the shortcomings of Hegde. Martin describes a system that includes two different switching devices that can dispatch requests, but teaches nothing about scalability. Specifically, Martin discloses a system that always has two switching devices; there is no discussion of including only a single switching device if only the capacity of a single switching device is appropriate, or adding third, fourth, or nth switching devices if additional switching capacity is appropriate. Moreover, there is no discussion of scaling the capacity of control components,

only switching components. Thus, Martin fails to teach or suggest what was recited by the now-canceled or the currently pending claims with regard to independent scalability. Because Martin does not make up for the shortcomings of Hegde, the Office Action fails to make out a *prima facie* case of obviousness against either the now-canceled or now-pending claims.

Additionally, the cited references fail to disclose presenting one or more control components in which one of the control components can provide backup for another of the control components if that other control component should fail to operate. Specifically, claims 49 and 50, which depend from claim 33, recite:

49. (New) The apparatus of claim 33, wherein each of the one or more control components are configured process requests from the one or more switch components directed to an other control component when the other control component fails to operate.

50. (New) The apparatus of claim 33, wherein the one or more control components each receive all instruction requests from the one or more switch components to provide fault tolerance when one of the one or more of control components fails to operate.

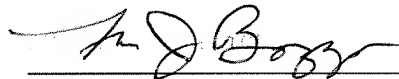
Respectfully, the cited references do not describe either of these capabilities. Applicants note that independent claims 53, 57, and 61, recite one of the control components processing instructions for or replacing another of the control components when that other control component fails to operate. The cited references do not teach these limitations and, thus, the new claims are in condition for allowance.

CONCLUSION

In view of the foregoing amendments and remarks, all pending claims are believed to be allowable and the application is in condition for allowance. Therefore, a Notice of Allowance is respectfully requested. Should the Examiner have any further issues regarding this application, the Examiner is requested to contact the undersigned attorney for the applicants at the telephone number provided below.

Respectfully submitted,

MERCHANT & GOULD P.C.



Frank J. Bozzo
Registration No. 36,756
Direct Dial: 206.342.6294

MERCHANT & GOULD P.C.
P. O. Box 2903
Minneapolis, Minnesota 55402-0903
206.342.6200

